

June 1999  
Financial Responsibility

Since January of this year, almost all of the focus has been on the PECFA program and the legislative and administrative rule changes that are being implemented. Although PECFA will certainly continue to be a major topic, I would like to return to underground storage tanks for a brief discussion of financial responsibility. In the course of responding to a series of owner inquiries, it has become apparent that, although these points may have been covered in the past, they warrant coverage again in this month's article.

When we reached the EPA deadline for federally regulated underground storage tanks to be upgraded or replaced, we actually touched two milestones. Not only were all "in use federally regulated tank systems" required to meet the new corrosion and design standards, we also reached the point where PECFA was no longer providing operating systems with "insurance" for new releases. As federally regulated systems were being upgraded or replaced, the number of systems that PECFA was insuring (for new releases) was dwindling. As of 12/22/98, only UST systems that met the new standards could be in operation and these are all required to have their own financial responsibility coverage.

Even though this milestone has been a long time in coming, some owners still have a series of questions. Paraphrased they include:

**Does the upgrading of my system and the requirement for me to have insurance mean that PECFA will stop paying for my current remediation?**

No, the insurance requirement is forward looking and is designed to provide coverage for new releases. The existing remediation will be completed under PECFA up to the coverage limits provided by the statutes.

**Do I have to buy insurance now or can I wait until you write enforcement orders for me to buy it?**

Insurance is required when a new system is installed and goes into operation or within 30 days of when a system is upgraded (the 30 day window is granted to systems upgraded after 12/31/93). Although it may be possible for owners to escape buying insurance until the enforcement process finds them, it does create additional risks and possible costs. In addition to the possibility of a leak during the period of no insurance, it is also possible that an insurance provider may want a site investigation if there is a window between the point in time that a new system goes into operation and when the insurance is obtained. The cost of potential site work, to demonstrate that there has not been a release during the "window", would be an additional cost to the owner and this cost could far exceed the cost of the actual insurance.

**I have an area of my property where new tank systems were installed. I also have an old tank bed where I have out of service tank systems scheduled for removal. Does my insurance policy have to cover the old tank systems?**

No, the insurance needs to cover new releases from the new or upgraded systems that you have in use. If the old tank bed systems were used for retail sales and were operated in compliance with the Flammable and Combustible Liquids code, remediation coverage is likely

available under the PECFA program. (The term "likely" is used because it is impossible to predict every situation that may be encountered on a site.)

**What happens if I do not buy insurance and I have a leak? Will PECFA have the discretion to help me with the remediation?**

Coverage under the PECFA program is statutory and the program does not have the ability to write administrative rules or interpret coverages to include those owners that are required to have their own insurance. If a leak takes place and the required insurance does not exist, the owner will still be financially responsible for the remediation.

**Will the inspector, who visits my site, verify my insurance coverage?**

Because insurance is usually bought as a single policy across potentially many sites, verification of coverage will be from the state level. We are incorporating a series of computer changes so that we can track that a single policy covers a range of sites and tank systems.

**Do I have to buy insurance for my aboveground storage tank systems?**

This is really a two-part question. First, as we all have learned through the PECFA program, leaks do occur and they are expensive to remediate. This is a risk management issue. If you do not have excess financial resources to cover an accident that might take place, you have a risk to manage and one that is usually best addressed through insurance coverage. As we also learned from the PECFA program, very few owners have the ability to personally fund a remediation and, consequently, insurance is the common means of addressing this business risk.

The second answer to the question is that the "financial responsibility requirement" is currently only imposed on the "in use" underground storage tank systems that fall under the EPA rules.